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The Individual Versus Society: The Cultural Dynamics of Criminalizing Suicide

By BENJAMIN P. FAY*

I. INTRODUCTION

Suicide is universal. It occurs in cultures throughout the world,¹ and it has occurred throughout history.² It is mentioned in the Rig Veda, the Bible, and the Koran.³

Suicide is very disturbing. It questions one of our most deeply held assumptions—that life is worth living. It invokes feelings of guilt, failure, and fear: guilt, that somehow we caused the suicide; failure, that somehow we could have prevented it; and fear, that other people will follow the example of the suicide. To assuage these feelings we often turn to our criminal justice systems, criminalizing assisted suicide,⁴ attempted suicide, and even suicide itself.

The question of whether to criminalize suicide involves the balancing of two competing choices: the individual's choice and the soci-

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1. See, e.g., SUICIDE IN ASIA AND THE NEAR EAST (Lee A. Headley ed., 1983); WORLD HEALTH ORGANIZATION, REGIONAL OFFICE FOR EUROPE, CHANGING PATTERNS IN SUICIDE BEHAVIOR (EURO Reports and Studies No. 74, 1982); FATIMA MEER, RACE AND SUICIDE IN SOUTH AFRICA (1976)(discussing suicide in Africa); CULTURE, YOUTH AND SUICIDE IN THE PACIFIC: PAPERS FROM AN EAST-WEST CENTER CONFERENCE (Francis X. Hezel et al. eds., 1985); LOUIS I. DUBLIN, SUICIDE: A SOCIOLOGICAL AND STATISTICAL STUDY 83-92 (1963)(discussing suicide in primitive cultures).

2. Richard H. Seiden, *Suicide: Behavioral Aspects*, in *ENCYCLOPEDIA OF CRIME AND JUSTICE* 1521, 1521 (Sanford H. Kadish ed., 1983).

3. *Id.*

4. Assisted suicide is the provision of aid or encouragement to a person who commits suicide. It is essentially passive; the assister does not do the actual killing. If the assister actively participates, for example by injecting a drug or pulling a trigger, it is generally considered homicide. Catherine D. Shaffer, Note, *Criminal Liability for Assisting Suicide*, 86 COLUM. L. REV. 348, 351 (1986).

ety's choice. Balancing these two choices involves weighing the interest of the individual in choosing her own destiny and the interest of the society in preserving the lives of its members. Whether suicide should be criminalized depends on whose choice and which interest the culture places more value. The more value the culture places on the individual's interest in controlling her own destiny, the less the law should prevent her from committing suicide. The more value the culture places on the society's interest in preserving the lives of its members, the more the law should restrict the individual's right to commit suicide. These values, of course, vary from culture to culture and vary within each culture over time.

Suicide laws must reflect this cultural balance between the interest of the individual and the interest of the society. If they do not, they will either be unenforceable or inadequate. With laws concerning suicide and attempted suicide, this balancing of interests is fairly straight forward. There are only two parties concerned: the individual who commits or tries to commit suicide and the state, as the representative of the society, which tries to prevent the individual from committing suicide. The only issue is whether the state can try to prevent the individual from performing her act. The state and the individual represent the two competing interests, and the issue is reduced to the balancing of these two interests.

Laws concerning assisted suicide, however, are considerably more complicated. While suicide and attempted suicide involve only the individual's choice and the society's choice, the issue in assisted suicide is clouded by the intervention of the third party—the assister. It is no longer only the individual who chooses to die. The assister also chooses for the individual to die.⁵ In cases in which the individual's choice to commit suicide is unclear, and the assister's choice is prominent, assisted suicide begins to resemble murder. In such cases, even though suicide and attempted suicide may be legal, it is often culturally viable to criminalize certain types of assisted suicide.

An examination of the history of suicide laws in England and India reveals this balance of culturally determined values. In both countries the decision to criminalize or not to criminalize suicide has been couched in terms of the individual's interest versus the society's interest. Although these two countries are culturally very different, both of their histories demonstrate that suicide laws which do not accu-

5. Of course, in many cases the assister does not actually want the individual to die. Nonetheless, by choosing to give aid the assister has chosen for the individual to die.

rately reflect the culture are unenforceable. Furthermore, their histories also illustrate the added complexity of assisted suicide and the apparent paradox that it can be culturally viable to make assisted suicide illegal even when suicide is not. Lessons can be drawn from these countries' experiences to guide the United States as we grapple with the question of whether to criminalize assisted suicide.

II. SUICIDE LAWS IN ENGLAND

A. Suicide

Under English common law suicide was a felony.⁶ Blackstone classified it as "felonious homicide."⁷ He considered it "self-murder."⁸ Suicide was classified as murder because it consisted of the same elements—the taking of a life with malice aforethought.

Hales v. Petit,⁹ one of the earliest reported English suicide cases, illustrates the legal logic behind this classification. A coroner's jury had determined that Sir James Hales had committed suicide by drowning himself in a river.¹⁰ The court observed that Sir James Hales had murdered himself with malice aforethought.¹¹

[A]s to the quality of the offence which Sir James has here committed . . . it is in a degree of murder, and not of homicide or manslaughter, for homicide is the killing of a man feloniously without malice prepen-^{se}, but murder is the killing a man with malice prepen-^{se}. And here the killing of himself was prepen-^{sed} and resolved in his mind before the act was done.¹²

To this line of reasoning, the fact that the perpetrator and the victim were the same person did not change the conclusion.¹³ The court simply explained that "Sir James Hales being alive caused Sir James Hales to die; and the act of the living man was the death of the dead man."¹⁴

6. Seiden, *supra* note 2, at 1526.

7. 4 WILLIAM BLACKSTONE *188.

8. *Id.* at *189. Blackstone expressed his disdain for suicide when he referred to it as "the pretended heroism, but real cowardice, of the Stoic philosophers, who destroyed themselves to avoid those ills which they had not the fortitude to endure." *Id.*

9. *Hales v. Petit*, 75 Eng. Rep. 387 (K.B. 1561-62).

10. *Id.* at 390.

11. *Id.* at 399.

12. *Id.*

13. *Id.* at 401.

14. *Id.*

Punishing people who had committed suicide was problematic. Unlike other felons, they could not be executed.¹⁵ However, an attempt could be made to deter would-be suicides by punishing that which would survive their deaths—their material possessions and their souls. Their material possessions were punished by forfeiting all of their goods and chattels to the king.¹⁶ Their souls were punished by denying them Christian burials. They were buried at night at cross-roads in the highway with stakes driven through their bodies.¹⁷ It was hoped that these measures would cause prospective suicides, out of fear for the welfare of their families and their souls, to forgo their intended act.¹⁸

When the reasons given by the English courts for criminalizing suicide are considered, it becomes apparent that the courts had decided that the society's interest in preserving the lives of its members outweighed the individual's interest in self-determination. Suicide was criminalized because the courts considered it an offense against both God and king.¹⁹ It was an offense against God because it violated the commandment "thou shalt not kill,"²⁰ and, as Blackstone explained, because the suicide "invad[ed] the prerogative of the Almighty . . . rushing into his immediate presence uncalled for."²¹ God brought each person into this world and it was God's choice to decide when each person should leave; it was not the individual's choice. Suicide was an offense against the king because it deprived him of a subject²² and because it set a bad example for his other subjects.²³ The king had a right to punish people who committed suicide because he "ha[d] an interest in the preservation of all his subjects."²⁴ The king's interest outweighed the individual's interest. When the courts were considering the interests of God and king, they were considering what they believed to be the interest of the society.

However, the determination by the courts that the society's interest outweighed the individual's interest did not accurately reflect the

15. *See id.* at 398.

16. *Id.* at 397, 400.

17. 4 WILLIAM BLACKSTONE *190; Dennis E. Hoffman & Vincent J. Webb, *Suicide as Murder at Common Law: Another Chapter in the Falsification of Consensus Theory*, 19 CRIMINOLOGY 372, 374-75 (1981).

18. 4 WILLIAM BLACKSTONE *190.

19. *Id.* at *189; *Hales v. Petit*, 75 Eng. Rep. at 400.

20. *Hales v. Petit*, 75 Eng. Rep. at 400.

21. 4 WILLIAM BLACKSTONE *189.

22. *Hales v. Petit*, 75 Eng. Rep. at 400.

23. *Id.*

24. 4 WILLIAM BLACKSTONE *189.

values of the culture. This resulted in a form of legal activism by the coroners' juries, whose job it was to determine the cause of death.²⁵ The coroners' juries knew that if a person was insane when he committed suicide, then his actions were not criminal.²⁶ He would receive a proper burial, and his estate would not be forfeited.²⁷ So the coroners' juries frequently decided that the person who had committed suicide had been insane.²⁸ In fact, the most common verdict returned by coroners' juries in suicide cases was temporary insanity.²⁹ The proportion of suicide cases that reached a verdict of insanity steadily increased from the fourteenth century to the nineteenth by which time a person who had committed suicide was rarely pronounced sane.³⁰ Blackstone complained of this trend, observing that coroners' juries were using the act of suicide itself to justify a finding of insanity.³¹

By the beginning of the nineteenth century, there were public calls to remove the penalties for suicide.³² It was argued that the severity of the criminal sanctions led to their nonenforcement.³³ Reacting to this public sentiment, Parliament gradually removed the punishments for suicide. In 1823 the Right to Burial Act ended the tradition of ignominious burial at the highway,³⁴ and in 1870 the Abolition of Forfeiture Acts removed the penalty of forfeiture.³⁵

Committing suicide remained a felony, albeit without any punishment, until the Suicide Act of 1961 made it no longer a crime to commit suicide.³⁶

B. Attempted Suicide

In England, the history of attempted suicide paralleled the history of suicide. Since suicide was a felony at common law, to attempt suicide was a misdemeanor.³⁷ Offenders were often imprisoned. As late as the nineteen-fifties, people were being imprisoned for up to

25. Hoffman & Webb, *supra* note 17, at 377.

26. 4 WILLIAM BLACKSTONE *189.

27. Hoffman & Webb, *supra* note 17, at 378.

28. *Id.*

29. *Id.*

30. *Id.*

31. 4 WILLIAM BLACKSTONE *189.

32. Hoffman & Webb, *supra* note 17, at 379.

33. *Id.*

34. *Id.*

35. *Id.*

36. Suicide Act, 1961, 9 & 10 Eliz. 2, ch. 60, § 1 (Eng.).

37. Jose P. Cristomo et al., *The Right to Die*, 55 PHIL. L.J. 338, 344 (1980).

two years for attempting suicide.³⁸ However, when the Suicide Act of 1961 decriminalized suicide, it logically followed that to attempt suicide was no longer a crime.³⁹

C. *Assisted Suicide*

The recent history of assisted suicide in England illustrates the difficulties of deciding whether to criminalize assisted suicide. On the one hand, people who, for their own selfish reasons, push others to commit suicide should be sanctioned. On the other hand, if the culture gives individuals the choice to commit suicide, they should not be prevented from exercising that choice. Reconciling these two extremes in a law is difficult.

When committing suicide was a crime, assisting a suicide was also a crime under the common law rules of accomplice liability. An abettor who was present at the time of the suicide was considered a principal to the crime and was punished as such.⁴⁰ Since suicide was a felony, and the punishment for all felonies was death, the penalty for assisting a suicide and being present at its commission was death.⁴¹ If the abettor was not present at the commission of the crime, then she was an accessory before the fact.⁴² However, at common law an accessory before the fact could not be tried until the principal had been convicted.⁴³ Because a dead person could not be brought to trial, in the case of a successful suicide an accessory before the fact could never be punished.⁴⁴ Therefore, at common law you had the odd result that the punishment for abetting a suicide depended upon whether the abettor was present when the suicide was committed.

When Parliament passed the Suicide Act of 1961, decriminalizing suicide and attempted suicide, it decided to maintain the criminality of assisting a suicide. It did this by creating a new principal crime—assisting a suicide. Section 2(1) of the Suicide Act provides:

A person who aids, abets, counsels or procures the suicide of another, or an attempt by another to commit suicide, shall be liable on

38. GLANVILLE WILLIAMS, *THE SANCTITY OF LIFE AND THE CRIMINAL LAW* 280-81 (1957).

39. J.C. SMITH & BRIAN HOGAN, *CRIMINAL LAW* 359 (1988).

40. MODEL PENAL CODE § 210.5 cmt. 1, n.7 (1980); WILLIAM BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND* 1356-57 n.2 (James DeWitt Andrews ed., 4th ed., 1899).

41. MODEL PENAL CODE § 210.5 cmt.1, n.7 (1980).

42. *Id.*

43. *Id.*

44. BLACKSTONE, *supra* note 40, at 1356-57 n.2.

conviction on indictment to imprisonment for a term not exceeding fourteen years.⁴⁵

Although the wording of the statute is couched in the language of accessory liability, liability for this crime is principal in nature.⁴⁶ This means that it may serve as the basis for an attempt.⁴⁷ This has had the odd result of broadening the range of criminal liability for abetting a suicide. At common law it was not a crime to attempt to abet a crime.⁴⁸ Now, under the Suicide Act, a person can be prosecuted for attempting to abet a suicide.⁴⁹ As one commentator has observed, "[i]t is ironical that legislation designed to remove the stigma of criminality from the perpetrator of suicide or attempted suicide has done so at the expense of the person who attempts to help him achieve that end."⁵⁰

Since the passage of the Suicide Act of 1961 there have been two primary cases dealing with the application of section 2(1): *Yolanda Tregenna McShane*⁵¹ and *Attorney-General v. Able*.⁵² The *McShane* case demonstrated the necessity for making certain types of assisted suicide illegal. It was a case where the assister's choice so overshadowed the principal's choice that it was no longer clear that it was the principal's choice to attempt to commit suicide. When the law was applied, it was not just the individual's choice to commit suicide against the society's choice to prevent her. It had become the society's choice to prevent the assister from pushing the individual to choose suicide. The *Able* case, on the other hand, shows the difficulty of crafting a law for assisted suicide which does not hinder the individual from exercising her choice to commit suicide.

In *Yolanda Tregenna McShane*, the defendant, Yolanda McShane, was convicted under the Suicide Act for attempting to abet the suicide of her mother.⁵³ Her mother was in a convalescent home recovering from a fractured hip.⁵⁴ After one of Yolanda's visits, her mother went

45. Suicide Act, 1961, § 2(1).

46. K.J.M. Smith, *Assisting in Suicide—The Attorney-General and the Voluntary Euthanasia Society*, 1983 CRIM. L.R. 579, 579 (1983) [hereinafter *Voluntary Euthanasia Society*].

47. *Id.*

48. Christopher Ash, *Complicity in Suicide: Publishers at Risk?*, 132 NEW L.J. 178, 178 (1982).

49. *Id.* at 181.

50. *Id.*

51. *Yolanda Tregenna McShane*, 66 Crim. App. 97 (Eng. C.A. 1977).

52. *Attorney-General v. Able*, [1984] 1 Q.B. 795.

53. *McShane*, 66 Crim. App. at 98.

54. *Id.* at 99.

into a coma.⁵⁵ It was suspected that the coma had been induced by drugs that Yolanda had given to her mother.⁵⁶ The mother recovered. The police hid microphones and a video camera in the mother's room to observe Yolanda's next visit.⁵⁷ During her visit, Yolanda was heard to say to her mother:

Whisky with barbiturates is fatal. If I were convicted I could not get the money. I wouldn't be allowed to inherit, but if I left you the means and a week or two from now you took the means then that is nothing to do with me is it? . . . Don't let's make a mess of it this time. We thought we had done so well before.⁵⁸

Before she left, Yolanda was seen to pin a packet to the inside of her mother's clothing.⁵⁹ The packet was found to contain nembutal tablets.⁶⁰

At trial it was revealed that Yolanda stood to inherit a large sum of money when her mother died,⁶¹ and due to a recent business failure Yolanda was in serious financial trouble.⁶² It was evidenced that she bore no affection for her mother and, seeing her as an obstacle to her inheritance, wished her dead.⁶³ Yolanda herself admitted that she wanted her mother to die.⁶⁴ The court perceived Yolanda's assistance to be akin to attempted murder. It appeared that her mother's attempted suicide had been not so much her mother's choice as it had been Yolanda's. This case shows that the logic which renders suicide and attempted suicide legal does not necessarily apply to the legalization of assisted suicide.

While the case of *Yolanda Tregenna McShane* illustrates a reason for criminalizing assisted suicide, the case of *Attorney-General v. Able* illustrates the difficulty of not making the law too broad. The defendants were board members of the Voluntary Euthanasia Society, an organization dedicated to the legalization of euthanasia.⁶⁵ In 1981 the society distributed a booklet entitled "A Guide to Self-Deliver-

55. *Id.*

56. *Id.* at 98.

57. *Id.*

58. *Id.* at 100.

59. *Id.* at 98.

60. *Id.* Nembutal is a strong barbiturate. MEDICAL ECONOMICS, PHYSICIANS' DESK REFERENCE 439 (1995). Overdoses induce deep coma and even death. *Id.*

61. *McShane*, 66 Crim. App. at 99.

62. *Id.* at 100.

63. *Id.* at 99.

64. *Id.* at 101.

65. *Attorney-General v. Able*, [1984] 1 Q.B. 795, 801.

ance."⁶⁶ The booklet described various effective and relatively painless methods of committing suicide.⁶⁷ It also contained several statements encouraging the reader to think seriously before committing suicide, and it listed several reasons why a person should not commit suicide.⁶⁸ It was made available to all members of at three months standing who were at least twenty-five years old.⁶⁹

The Attorney-General sought a court declaration that distribution of the booklet violated section 2(1) of the Suicide Act.⁷⁰ Following *McShane*, the court held that by distributing the booklet the society was guilty of attempting to assist suicide under section 2(1) if: (1) they intended the booklet to be provided to people who were contemplating suicide, and they intended it to help or encourage them; and (2) they distributed it to these people with these intentions.⁷¹ This holding leaves the English law of assisted suicide very broad and completely unclear. Anybody who gives information or advice to a would-be suicide is vulnerable to prosecution.⁷² This is an unsatisfactory result because it does not distinguish between cases such as *McShane*, where the assister's choice overshadows the principal's choice, and *Able*, where the assister is simply providing information to would-be suicides, but is not pushing them towards it.

III. SUICIDE LAWS IN INDIA

A. Suicide

In India suicide has historically not been condemned to the same extent that it has been in England. Although Hinduism, the dominant religious thought in India, disapproves of suicide in general, in many circumstances it is tolerated and even acclaimed.⁷³ Some Hindu texts state that a person who is very old or very sick and who has no more desire for life can commit suicide without incurring sin.⁷⁴ Saints, politicians, and religious leaders have been known to set fire to them-

66. *Id.* at 801-02.

67. *Id.* at 803.

68. *Id.* at 803-04.

69. *Id.* at 802.

70. *Id.* at 801.

71. *Id.* at 812.

72. *Voluntary Euthanasia Society*, *supra* note 46, at 586.

73. Faizan Mustafa, *Should Section 309, I.P.C. Continue on the Statute Book?*, *SUP. CR. J. (India)*, Jan.-Apr. 1993, at 36, 36-37; *Dubal v. State of Maharashtra*, 88 Bombay L. Rep. 589, 596 (Bombay H.C. 1986).

74. *Dubal*, 88 Bombay L. Rep. at 595.

selves.⁷⁵ This is not condemned by Hindu society, rather it is commemorated and eulogized.⁷⁶ There was the medieval Rajput tradition of *Johar*—a mass suicide committed by the women of a household to avoid capture by an invading army.⁷⁷ There is the practice of *samadhi*—the termination of one's life by restraint of breathing.⁷⁸ And then there is the tradition of *sati*, the self-immolation of a widow on her husband's funeral pyre, which was, and in some parts of India still is, treated with reverence.⁷⁹

When the Moghuls conquered India in the sixteenth century they imposed Islamic law in all criminal matters.⁸⁰ Islam explicitly forbids suicide.⁸¹ It is a crime against God and society which is worse than homicide.⁸² It is a crime against God because God created life, and only He should end it.⁸³ It is a crime against society because the individual is selfishly repudiating his societal obligations—obligations to his parents, children, siblings, and friends.⁸⁴ Even people suffering from disease, no matter how painful and hopeless, are doomed to hell if they commit suicide.⁸⁵ Under Islamic law, the society's choice in this matter is more important than the individual's choice.

The British, who gradually assumed control of India in the eighteenth and nineteenth centuries, drew up the Indian Penal Code in 1837.⁸⁶ The Code combined elements of English law, Indian law, the Louisiana Code, and the Code Napoleon.⁸⁷ Influenced by current trends in England,⁸⁸ it did not criminalize suicide although attempted suicide and assisted suicide were criminalized.⁸⁹ The Indian Penal

75. *Id.* at 597.

76. *Id.*

77. UPENDRA THAKUR, *THE HISTORY OF SUICIDE IN INDIA* 161-62 (1963); Mustafa, *supra* note 73, at 37.

78. Mustafa, *supra* note 73, at 37.

79. *Dubal*, 88 Bombay L. Rep. at 597; Mustafa, *supra* note 73, at 37.

80. D.A. DESAI ET AL., 1 RATANLAL & DHIRAJLAL'S *LAW OF CRIMES* 1 (23rd ed. 1987).

81. Jalaluddin Umri, *Suicide or Termination of Life*, 7 *ISLAMIC & COMP. L.Q.* 136, 137 (1987).

82. *Dubal*, 88 Bombay L. Rep. at 594.

83. Umri, *supra* note 81, at 138.

84. *Id.* at 137.

85. *Id.* at 139. Mohammed is quoted to have said "[h]e who commit suicide by throttling shall keep on throttling himself in the Hell-Fire (for ever) and he who commits suicide by stabbing himself shall keep on stabbing himself in Hell-Fire (for ever)." Mustafa, *supra* note 73, at 37.

86. DESAI ET AL., *supra* note 80, at 1.

87. *Id.*

88. See *supra* text accompanying notes 32-35.

89. INDIA PEN. CODE §§ 305, 306, 309.

Code remains the criminal law of India,⁹⁰ and under it suicide is not a criminal offense.

B. Attempted Suicide

The controversy in India over the criminalization of attempted suicide demonstrates the problem of criminalizing attempted suicide when the dominant culture feels it should be the individual's choice.

When the English drew up the Indian Penal Code they criminalized attempted suicide. Under section 309 of the Indian Penal Code, to attempt to commit suicide is explicitly prohibited.

309. Attempt to commit suicide.—Whoever attempts to commit suicide and does any act towards the commission of such offense, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.⁹¹

In Indian criminal law, this is the only instance where an attempt to commit an offense is punishable while the actual commission is not.⁹²

Criminalizing attempted suicide does not fit Hindu culture any more than criminalizing suicide itself. Since the nineteen-fifties, after gaining independence from the British, the Indian judiciary has looked for ways to avoid enforcing this law.⁹³ Although the judiciary's methods of obstructing the law have necessarily relied on legal mechanisms—from reducing the sentence, to refusing to acknowledge *mens rea*, to dismissing a case for procedural reasons, to even declaring the law unconstitutional—the underlying reason is clearly a conviction that the society does not have the right to punish an individual who chooses to end his life. As one Indian commentator has written, expressing this conviction, "Is it not being barbaric and cruel to a person who fails in extinguishing his 'more-miserable-than-death' life, by putting him in jail? If the State cannot provide a person with humane living conditions, can it be just in retrenching his right to die?"⁹⁴

As was mentioned above, one way to obstruct section 309 has been to reduce the sentence of persons convicted of attempted suicide. A good example of this is the 1967 case of *Valentino v. State*.⁹⁵

90. DESAI ET AL., *supra* note 80, at 2.

91. INDIA PEN. CODE § 309.

92. D.A. DESAI ET AL., 2 RATANLAL & DHIRAJLAL'S LAW OF CRIMES 1230 (23rd ed. 1988).

93. Girish Kathpalia, *Right to Die: Controversial Law*, LEX ET JURIS, Apr.-May, 1989, at 49, 50.

94. *Id.* at 49.

95. *Valentino v. State*, 1967 A.I.R. (Goa) 138.

The defendant—out of work, separated from his wife, ignored by his parents who refused to help him, and starving along with his fifteen-month-old daughter—apparently grabbed his daughter and jumped into a well.⁹⁶ Applying section 309, the trial court sentenced him to six months hard imprisonment.⁹⁷ However, the appellate court reduced this sentence to the time he had already served—three months and ten days.⁹⁸ In ruling the court observed:

The accused had reached the stage of utter destitution and his closest relations were not out to help him even with two square meals a day. . . . The accused had to be pitied rather despised if in such circumstances he took the extreme step of attempting to finish his life, the most precious gift known to all living things.⁹⁹

Another way to obstruct the application of this law has been to deny the existence of the necessary *mens rea*.¹⁰⁰ In a move similar to the old English coroners' juries, judges have sometimes considered suicidal behavior itself to be evidence of temporary insanity. The 1976 case of *Phulabai v. State of Maharashtra*¹⁰¹ is a good example of this. The defendant, Phulabai, was convicted of attempted suicide. For an entire year prior to the attempt she had been ill, and in spite of medical treatment her condition had not improved.¹⁰² One night, when the family was asleep, she collected her one-and-a-half year old son, Vithal, who was suffering from rickets, tied him to her stomach with her *sari*, unchained the door of the house, walked the two hundred feet to the well, and jumped in.¹⁰³ At trial she was convicted of attempted suicide.¹⁰⁴ However, on appeal she was acquitted on the theory of temporary insanity, even though the only evidence that she had been temporarily insane was that she had jumped into the well.¹⁰⁵ Judge Vaidya wrote:

[W]e have no evidence as to how exactly the accused and Vithal fell into the well. From the mere fact that they were discovered next morning, it may be possible to hold that she attempted to commit suicide by jumping along with her child, but it is also possible that

96. *Id.* at 139-40.

97. *Id.* at 138.

98. *Id.* at 142.

99. *Id.*

100. Kathpalia, *supra* note 93, at 50.

101. *Shinde v. State of Maharashtra*, 1976 Crim. L.J. 1519 (Bombay H.C. 1976).

102. *Id.* at 1519.

103. *Id.*

104. *Id.* at 1519-20.

105. *Id.* at 1520-21.

she was in such unsound state of mind that she did not know what she was doing when she jumped into the well along with her child. . . . The absence of medical evidence does not justify exclusion of common sense.¹⁰⁶

The court felt that since she jumped into the well, she was probably crazy, since only a crazy person would do such a thing.

Another popular approach to obstructing section 309 has been to dismiss cases on procedural grounds.¹⁰⁷ In 1985, the Delhi High Court quashed, on procedural grounds,¹⁰⁸ all 119 section 309 proceedings that were pending in the Delhi trial courts.¹⁰⁹ In one of the dismissals, Justice Rajindar Sachar began his opinion with an ideological attack on the criminalization of attempted suicide, explaining the underlying reason for why he was dismissing the case.

It is ironic that Section 309 I.P.C. still continues to be on our Penal Code. The result is that a young boy driven to such frustration so as to seek one's own life would have escaped human punishment if he had succeeded but is to be hounded by the police because attempt has failed. . . . Instead of the society hanging its head in shame that there should be such social strains that a young man (the hope of tomorrow) should be driven to suicide compounds its inadequacy by treating the boy as a criminal. Instead of sending the boy to psychiatric clinic [sic] it gleefully sends him to mingle with criminals, as if trying its best to see that in future he does fall foul of the punitive sections of the Penal Code. . . . The very idea is revolting. This concept seeks to meet the challenge of social strains . . . by ruthless suppression of mere symptoms—this attempt can only result in failure.¹¹⁰

This movement of judicial activism culminated in 1986 with the ruling of the Bombay High Court in *Maruti Shripati Dubal v. State of Maharashtra*.¹¹¹ The court found a legal reason for declaring section 309 of the Penal Code unconstitutional.¹¹² It held that the Indian constitution inferred a right to die,¹¹³ and section 309 violated that right.¹¹⁴

106. *Id.* at 1521.

107. Mustafa, *supra* note 73, at 39.

108. *Id.*

109. Kathpalia, *supra* note 93, at 51.

110. *State v. Sanjay Kumar Bhatia*, 1985 Crim. L.J. 931, 931-32 (Delhi H.C. 1985).

111. *Dubal*, 88 Bombay L. Rep. at 596.

112. *Id.* at 600.

113. *Id.* at 593.

114. *Id.* at 600.

Maruti Shripati Dubal, a police officer with psychiatric problems, tried to commit suicide by dowsing himself with kerosene and setting fire to his clothes.¹¹⁵ Fortunately he failed. After being charged with attempting to commit suicide, he petitioned the High Court challenging the constitutionality of section 309.¹¹⁶ In its opinion, the court first observed that the Indian Constitution recognizes a right to live as a positive right.¹¹⁷ It then pointed out that all of the fundamental rights have their corresponding negative aspects: the right to speak includes the right to remain silent; the right to associate includes the right not to associate; and the right to do business includes the right to shut down a business.¹¹⁸ Furthermore, what is true of one fundamental right is true of the others.¹¹⁹ Therefore, there must exist a negative aspect of the right to live—the right not to live—or, in other words, the right to die.¹²⁰ Because section 309 violates this right to die, it is unconstitutional.¹²¹

The court then defended this ruling, arguing that it was the just conclusion. It observed that there is nothing unnatural or wrong about wanting to die.¹²² People confuse the circumstances which lead a person to want to die—circumstances that are often wrong and unnatural—with the person's natural reaction—wanting to die.¹²³ They also confuse the natural wish for death with the unnatural way with which it is attained—self-starvation, self-strangulation, or, in this case, self-immolation.¹²⁴ Although it is usual that a person wants to live, and unusual that she wants to die, just being unusual does not make it unnatural.¹²⁵

The court also defended its position by observing that Hindu traditions honor many forms of suicide:¹²⁶ *sati*,¹²⁷ *johar*,¹²⁸ *samadhi*,¹²⁹

115. *Id.* at 590-91.

116. *Id.* at 591.

117. *Id.* at 593.

118. *Id.*, citing *Excel Wear v. Union of India*, 1978 4 S.C.C. 244.

119. *Dubal*, 88 Bombay L. Rep. at 593, citing *R.C. Cooper v. Union of India*, 1970 A.I.R. (Sup. Ct.) 1318.

120. *Dubal*, 88 Bombay L. Rep. at 593.

121. *Id.* at 600.

122. *Id.* at 593.

123. *Id.*

124. *Id.*

125. *Id.* at 593-94.

126. *Id.* at 597.

127. See *infra* text accompanying notes 145-67.

128. See *supra* text accompanying note 77.

129. See *supra* text accompanying note 78.

prayopaveshan,¹³⁰ and *atmanpana*.¹³¹ However, the court did acknowledge that Islam considers suicide a horrible crime.¹³²

Lastly the court argued that suicide is a personal choice.¹³³ The individual is master of his own body and society has no right to tell him what to do with it.

Suicide involves no damage to person or property of others. If destruction of one's property or its deliverance to others for a cause or no cause is not an offence, there is no reason why sacrifice of one's body for a cause or without a cause or for the mere deliverance of it should be regarded as an offence. Much less an attempt at doing so. One's life, one's body with all its limbs are certainly one's property and he is the sole master of it. He should have the freedom to dispose of it as and when he desires. Even at present the relevant statutes permit donation by an individual of certain parts of his body under certain conditions, thereby recognizing the right of the individual to deal with his body as he chooses.¹³⁴

The court argued that if a person's life is so bad that he has been driven to suicide, he should at least be allowed to escape his pain through death.¹³⁵

Some individuals resort to suicide to escape from the cruel conditions of life which are every moment a punishment to them. The deliverance from such mundane existence is in reality a boon to them. Yet, society which is either unable or indifferent to improving his conditions of life, seeks to punish him for his attempt at self-help or self-deliverance.¹³⁶

The court weighed the individual's interest in self-determination against the society's interest in preserving the lives of its members. It looked to the dominant Hindu culture for guidance, and decided that according to the culture the interest of the individual should win.

The *Dubal* decision sparked an uproar, generating both criticism, particularly from the Muslim community,¹³⁷ and support.¹³⁸ The

130. This is the starving of oneself to death. *Dubal*, 88 Bombay L. Rep. at 597.

131. This is self-sacrifice. *Id.*

132. *Id.* at 594.

133. *Id.* at 599.

134. *Id.*

135. *Id.*

136. *Id.*

137. See *Umri*, *supra* note 81 (arguing that the decision is wrong because it goes against Islam's explicit prohibition of suicide). See also H.C.M. Patro, *Attempt to Suicide As an Offense: To Be or Not to Be on Statute*, 3 SUP. CR. J.(INDIA) 27 (1988); Mustafa, *supra* note 73, at 40 (both arguing that the constitutional analysis used by the *Dubal* court was flawed and that there is no negative aspect to the right to live).

Dubal ruling had been appealed to the Supreme Court of India where it is still pending.¹³⁹

C. *Assisted Suicide*

Under the Indian Penal Code, assisting a suicide is a crime.¹⁴⁰ The structure of the Indian law concerning abetment of suicide shows that it is oriented towards assisters who push people to commit suicide. This was done by creating two different crimes. Section 306 of the Penal Code makes the abetment of any suicide illegal:

306. Abetment of Suicide.—If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.¹⁴¹

Section 305 prescribes a harsher punishment for anyone who abets the suicide of a child or a person who is mentally incompetent:

305. Abetment of Suicide of Child or Insane Person.—If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.¹⁴²

Assisting the suicide of a competent adult exposes the assister to a maximum of ten years in prison, whereas assisting the suicide of a minor or a person who is mentally incompetent exposes the assister to a possible life sentence or even the death penalty.

The harsher punishment in section 305 is an attempt to prevent the suicides of persons who have not really chosen to die. Because it is believed that children and mentally incompetent persons are more suggestible than others, and that they may not understand the consequences of their actions, it is feared that they are in greater danger of being pushed to suicide by unscrupulous people. Hindu culture may give the individual the choice to commit suicide,¹⁴³ but it must be that individual's choice.

138. See Kathpalia, *supra* note 93. See also Mishra Srikanta, *A Right to Die? A Controversial Question of Law and Medical Ethics*, 3 SUP. CR. J.(India) 61 (1991); Mustafa, *supra* note 73 (disagreeing with the court's methodology, but agreeing with the result).

139. So far as the author can tell, the Supreme Court has yet to rule on this case.

140. INDIA PEN. CODE §§ 305, 306.

141. INDIA PEN. CODE § 306.

142. INDIA PEN. CODE § 305.

143. See *supra* text accompanying notes 73-79.

The cases which apply the assisted suicide laws show that the laws are directed towards assisters who, it is believed, are causing a suicide. Many abetment of suicide prosecutions involve a widow who commits *sati* or an abused wife who commits suicide.¹⁴⁴ These are both situations where it is often feared that others have driven or even forced the woman to commit suicide. These cases feel like murder, but they are hard to prosecute as murder—causation being hard to prove because the woman has professed her will to commit suicide and often has killed herself with her own hand. As a result, the courts fall back on abetting a suicide. This would more accurately be called causing a suicide.

Since many of the assisted suicide cases involve *sati*, a brief discussion of *sati* is necessary. *Sati* is the ancient Hindu custom of burning a still-living widow along with her husband's body.¹⁴⁵ Although it was most common in Bengal,¹⁴⁶ *sati* has occurred throughout India.¹⁴⁷ It reached its high point in popularity between 1680 and 1830.¹⁴⁸ As the British assumed control of India, they tried to eradicate it.¹⁴⁹ After a series of ever-stricter regulations they finally made it illegal in 1829.¹⁵⁰ Since then its frequency has dwindled, but to this day there are still a few cases of *sati* every year.¹⁵¹

Sati was sometimes voluntary and sometimes it was forced. Whether most were voluntary or most were forced is disputed.¹⁵² However, it is generally agreed that a significant number were forced: widows were often drugged and lead to the funeral pyre in a stupor;¹⁵³ and once a widow had "agreed" to commit *sati*, she was often prevented from changing her mind.¹⁵⁴ Various measures were taken to ensure that the she did not change her mind: scaffolds might be built

144. See, e.g., DESAI ET AL., *supra* note 92, at 1213-14.

145. TAPAS KUMAR BANERJEE, *BACKGROUND TO INDIAN CRIMINAL LAW* 23 (1990).

146. *Id.*; Dorothy K. Stein, *Women to Burn: Suttee As a Normative Institution*, 4 SIGNS 253, 257 (1978).

147. See Stein, *supra* note 146, at 257.

148. BANERJEE, *supra* note 145, at 26. A survey of the Saugar District of the State of Madhya Pradesh estimated that between 1450 and 1824, 2% of the women became *satis*. Dorianne Jacobson, *The Chaste Wife: Cultural Norm and Individual Experience*, in *AMERICAN STUDIES IN THE ANTHROPOLOGY OF INDIA* 95, 97 (Syvia Vatuk ed., 1978).

149. See BANERJEE, *supra* note 145, at 110-13.

150. *Id.* at 113.

151. Stein, *supra* note 146, at 262; Jacobson, *supra* note 148, at 97.

152. See, e.g., BANERJEE, *supra* note 145, at 25 (most *satis* in Bengal were forced). But see Jacobson, *supra* note 148, at 97 (most *satis* were voluntary). See also Vina Mazumdar, *Comment on Suttee*, 4 SIGNS 269, 269 (1978)(example of a voluntary *sati*).

153. BANERJEE, *supra* note 145, at 25.

154. Stein, *supra* note 146, at 255.

which tilted towards the fire so that the woman would be dropped into the flames;¹⁵⁵ or the pyre would be built up around the woman with no exits by which to escape;¹⁵⁶ or she might even be tied to the firewood;¹⁵⁷ and finally, should she manage to clamber to the edge of the burning pyre, men stood by with sticks to push her back into the flames.¹⁵⁸

Women were compelled to commit *sati* for both economic and religious reasons. On the economic side, the husband's family did not want to have to support the widow.¹⁵⁹ Further, the family also wanted to inherit the husband's estate, which the widow controlled so long as she remained alive.¹⁶⁰ On the religious side, it was believed that the *sati* brought merit upon the whole family, absolving them of their sins and guaranteeing them a place in paradise.¹⁶¹

Some widows voluntarily committed *sati* for religious reasons. The orthodox Hindu woman was raised to believe that she ought to die before her husband.¹⁶² If he died before her, it was because of her sins; she had caused his death.¹⁶³ However, she could redeem herself if she committed *sati*.¹⁶⁴ Furthermore, because *sati* was eulogized and the places where widows committed *sati* became sacred spots, *sati* was glamorous.¹⁶⁵ Women also committed *sati* because they felt death was probably better than the life they would lead after their husband's death. Because the life of a widow was often miserable, the glamour of *sati* was often an appealing alternative.¹⁶⁶ "[T]he widow had but

155. *Id.*

156. *See id.*

157. *Id.*

158. BANERJEE, *supra* note 145, at 25; Stein, *supra* note 146, at 255. Tapas Kumar Banerjee relates a particularly grisly account of this:

There is a case reported where a woman did succeed, in the dark of a rainy night, in escaping from the pyre and hiding herself among some brushwood. But the attendants found her, and her own son dragged her out, and in spite of all her pleading, tied her hand and foot and threw her back into the flames. (citations omitted).

BANERJEE, *supra* note 145, at 25.

159. BANERJEE, *supra* note 145, at 24.

160. *Id.*; Stein, *supra* note 146, at 256.

161. Stein, *supra* note 146, at 256.

162. *Id.* at 255.

163. *Id.*

164. *Id.* at 256.

165. BANERJEE, *supra* note 145, at 25; Stein, *supra* note 146, at 254-55, 262; *see* Jacobson, *supra* note 148, at 130-33.

166. Stein, *supra* note 146, at 254. The life of a widow was very strict:

[S]he should not eat more than one very plain meal a day, . . . she should perform the most menial tasks, never sleep in a bed, leave the house only to go to the

two choices, a painful but relatively brief and heroic death, or a miserable, obscure, and humiliating life as a penitent sinner."¹⁶⁷

Two *sati* cases—*Emperor v. Ram Dayal*¹⁶⁸ and *King-Emperor v. Vidyasagar Pande*¹⁶⁹—illustrate the situation where a woman has committed *sati*, but in the court's mind she has been murdered. In *Ram Dayal*, although the *sati* appeared to be voluntary, somebody must have lit the pyre and thereby committed murder. However, because it could not be shown who had actually lit the pyre, the court had to settle for abetting a suicide. In *Vidyasagar Pande*, the *sati* appeared to be forced, but again it could not be shown who had lit the pyre. And so again the court had to settle for abetting a suicide.

In *Emperor v. Ram Dayal* a Brahman named Ram Lal had died, and his wife had announced that she would commit *sati*.¹⁷⁰ Her family argued with her, but she insisted.¹⁷¹ One of the village guards was sent to the closest police station, ostensibly to warn the authorities.¹⁷² However, since the station was eight miles away,¹⁷³ the earliest the police could arrive was that afternoon.¹⁷⁴ According to the five accused, the widow threatened to curse them if they did not allow her to commit *sati*,¹⁷⁵ and at nine that morning she ordered that the funeral pyre be built.¹⁷⁶ The accused carried the body to the burning *ghat*,¹⁷⁷ built the pyre, and placed the body upon it.¹⁷⁸ The widow climbed onto the pyre, and two of the five accused helped the widow perform the necessary ceremonies prior to committing *sati*.¹⁷⁹ The defendants claimed that they had refused to light the pyre, and so the widow had prayed to God and the pyre had miraculously burst into flame.¹⁸⁰

temple, keep out of sight at festivals (since she was inauspicious to everyone but her own children), wear nothing but the drabest clothes, and, of course, no jewelry. Perhaps most humiliating of all for a high-born lady was having her head shaved monthly by an untouchable male barber. (citations omitted).

Id. at 255.

167. *Id.* at 254-55.

168. 36 Indian L.R. (Allahabad) 26 (Allahabad H.C. 1914).

169. 8 Indian L.R. (Patna) 74 (Patna H.C. 1929).

170. *Ram Dayal*, 36 Indian L.R. (Allahabad) at 28.

171. *Id.*

172. *Id.*

173. *Id.*

174. *Id.* at 30.

175. *Id.* at 29.

176. *Id.* at 28.

177. The burning *ghat* is the place on the river bank where bodies are cremated.

178. *Ram Dayal*, 36 Indian L.R. (Allahabad) at 28.

179. *Id.* at 28-29.

180. *Id.* at 29.

The trial court convicted the five defendants of abetting a suicide,¹⁸¹ and the High Court of Allahabad affirmed the convictions.¹⁸² The High Court rejected the defendants' argument that they had actually tried to prevent the *sati*.¹⁸³ The court observed that if the defendants had truly wanted to prevent the *sati* it would have been very easy for them.¹⁸⁴ They could have waited a few hours for the police to arrive before building the pyre,¹⁸⁵ or they could have prevented the widow from mounting the pyre.¹⁸⁶ Although they may at first have argued with the widow about committing *sati*, they gave in to her determination and did all that was necessary to enable her to commit *sati*.¹⁸⁷ Not only did the court decide that the defendants had wanted the woman to commit *sati*, it is apparent from the opinion that the court believed that the defendants had probably lit the pyre—that they had crossed the line from assisting a suicide to committing a murder:

The witnesses and the accused also have told stories of miraculous deeds done by the widow that morning It is clear that the sympathies of the witnesses are naturally with the accused and that there is a conspiracy of silence as to who actually fired the funeral pyre. It is equally clear that the miraculous stories have been invented for this purpose.¹⁸⁸

But since it could not be proved who had lit the pyre, the court had to settle for a conviction of abetting a suicide. The court felt murder had been committed, but causation could not be proved.

King-Emperor v. Vidyasagar Pande is a more extreme case. Here the *sati* was forced. Again the court believed that the defendants had committed murder, but again it could not be proved who had actually lit the pyre and so again the court had to settle for abetting a suicide. The widow, Sampati Kuer, was only twenty years old.¹⁸⁹ She had married her husband ten or twelve years before, but had continued to live in her father's house.¹⁹⁰ She did not go to live with her husband until

181. *Id.* at 26-27.

182. *Id.* at 32-33.

183. *Id.* at 30.

184. *Id.*

185. *Id.*

186. *Id.*

187. *Id.* at 30-31.

188. *Id.* at 29.

189. *Vidyasagar Pande*, 8 Indian L.R. (Patna) at 76.

190. *Id.*

he lay dying, a few months before his death.¹⁹¹ When her husband died, the only close relative with her was her younger brother.¹⁹² She hardly knew her husband's relatives. The accused, a collection of her husband's relatives, her brother, and some local villagers had decided that she was to commit *sati*.¹⁹³ Although Sampati at first agreed to commit *sati*, she later changed her mind.¹⁹⁴ However, the defendants, accompanied by a chanting crowd of four or five thousand people, took her to the burning *ghat*.¹⁹⁵ The police tried unsuccessfully to stop them. At the *ghat* she bathed in the river, performed the necessary rituals, and mounted the funeral pyre.¹⁹⁶ A moment later, it burst into flame.¹⁹⁷ It could not be determined who had actually lit the pyre.¹⁹⁸ Upon feeling the pain of the flames, Sampati leapt from the fire into the river.¹⁹⁹ The defendants shouted at her to drown herself and tried to prevent the police from rescuing her.²⁰⁰ When she got to the shore, horribly burned, the police tried to take her away to a hospital, but they were driven off by the crowd.²⁰¹ A doctor tried to give her an injection to relieve her suffering, but he too was driven away.²⁰² For two days she lay there suffering.²⁰³ As she lay there, people threw coins to her which the defendants, in the words of the court, "greedily picked up."²⁰⁴ Finally the police managed to rescue her.²⁰⁵ A day later she died.²⁰⁶

The court felt that the accused had murdered her, but causation could not be proved. The court believed that the defendants, realizing they could be convicted for murder, had carefully disguised the method by which they had lit the pyre:

Now, note the situation. If the Pandes themselves set fire to the pyre they were under the observation of the police and they knew perfectly well that their necks would be in the hangman's noose.

191. *Id.*

192. *Id.*

193. *Id.* at 77.

194. *Id.* at 77-78.

195. *Id.* at 77-80.

196. *Id.* at 80.

197. *Id.*

198. *Id.*

199. *Id.* at 80-81.

200. *Id.* at 81.

201. *See id.*

202. *Id.* at 81.

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

Moreover, if they themselves set fire to the pyre there would have been no miracle of heaven-sent fire.²⁰⁷

Judging from where the flames began, the court believed that the defendants had placed an incendiary device in Sampati's clothing.

Flames burst from her clothing and the cause of those flames is no matter of surmise as we are asked to believe. We are not fools. . . . The trick was simpler than any conjurer's trick at a country fair and it was the Pandes who performed it.²⁰⁸

As in *Ram Dayal*, the court in *Vidyasagar Pande* believed that the defendants had committed murder, but did not have sufficient evidence to convict the accused of murder. So the court had to settle for a conviction of abetting a suicide.

A case which illustrates the problem of an abused wife being driven to suicide by an in-law is *Brij Lal v. Prem Chand*.²⁰⁹ The defendant, Prem Chand, was convicted under section 306 for abetting the suicide of his wife, Veena Rani.²¹⁰ Prem had subjected Veena to continuous abuse, reducing her life to a miserable existence.²¹¹ He beat her frequently²¹² and although she worked very hard and spent all of her money on him and the household, he tormented her to give him more money.²¹³ On the day that she committed suicide she had quarrelled with Prem.²¹⁴ He had demanded that she give him 1,000 rupees so he could buy a scooter.²¹⁵ However, she did not have 1,000 rupees.²¹⁶ So she wrote her mother and brother asking them for the money.²¹⁷ Even so, Prem did not relent and continued to demand that she give him the money immediately.²¹⁸ Distraught over the continuous demands for money, she told him that she preferred death to life in this world.²¹⁹ Prem replied that she would provide him with relief quicker by dying that day rather than waiting until the next,²²⁰ and

207. *Id.* at 80.

208. *Id.*

209. 76 A.I.R. (Sup. Ct.) 1661 (1989).

210. *Id.* at 1667.

211. *Id.* at 1665.

212. *Id.* at 1662.

213. *Id.*

214. *Id.* at 1663.

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.*

220. *Id.* at 1664.

that she could go to hell so long as he received the money.²²¹ Veena then went into her house and set herself on fire.²²² She died an hour later from the burns.²²³ The court held that Prem's longstanding abuse of Veena coupled with his words that she may as well end her life that day had caused her suicide.²²⁴ Her suicide had been not so much her choice as his. The court wrote:

In the instant case, we have already seen that the committing of suicide by Veena Rani was due to the accused's instigation. It is not a case where Veena Rani had wanted to commit suicide for reasons of her own and the accused had facilitated her in the commission of suicide.²²⁵

The court clearly believed that Prem had caused Veena's death.²²⁶

India's use of laws against assisted suicide show that even if suicide and attempted suicide are legal, there can still be good reasons to criminalize assisted suicide under certain circumstances. Even though a culture may decide that the individual has the right to choose suicide, it must still be that individual's choice. The difficulty with assisted suicide occurs when it is unclear whether the suicide is the individual's choice or the assister's wish.

IV. CONCLUSION

In the United States suicide is generally not criminalized. There is no state which by statute makes the commission of suicide a crime.²²⁷ Even in the minority of states which retain common law crimes, although suicide remains technically a crime, it is never prosecuted.²²⁸ Also, there is no state which statutorily makes attempted

221. *Id.* at 1663.

222. *Id.* at 1664.

223. *Id.*

224. *Id.* at 1665-66.

225. *Id.* at 1668.

226. In India, the problem of husbands driving their wives to suicide is significant. To deal with this problem, Section 113A was added to the Indian Evidence Act in 1983. *Id.* at 1669; A.N. SAHA, *CRIMINAL REFERENCE* 977 (4th ed., 1988). Section 113A creates a rebuttable presumption that a woman's suicide was abetted by her husband or one of his relatives. SAHA, *supra* at 977. The presumption is established if the following facts exist: "(a) the suicide must have been committed within seven years of marriage; [and] (b) the husband or relative of her husband must have subjected her to cruelty" *Id.*

227. Shaffer, *supra* note 4, at 348.

228. Seiden, *supra* note 2, at 1526-27.

suicide a crime.²²⁹ However, in almost half of the states it is criminal to assist a suicide.²³⁰

The debate over the criminalization of assisted suicide has recently been kindled by Dr. Jack Kevorkian. Dr. Kevorkian, a retired pathologist from Michigan,²³¹ has assisted twenty-one suicides since 1990.²³² The people he assisted were suffering from very painful, often terminal, diseases.²³³ In reaction, the Michigan legislature condemned Kevorkian's actions by criminalizing assisted suicide.²³⁴ However, Jack Kevorkian has also generated support. Opinion polls consistently show that there is widespread support for assisted suicide.²³⁵

In November 1994, Oregon voters passed Measure 16 which legalized physician-assisted suicide in certain circumstances.²³⁶ Two doctors must agree that the person's condition is terminal and that she has no more than six months to live,²³⁷ the patient must twice ask orally for the drugs and then a third time in writing,²³⁸ and finally the patient must administer the drugs herself.²³⁹ Catholic, Jewish, Muslim, Buddhist, and sixteen other Christian denominations opposed the measure.²⁴⁰ The Catholic Church itself spent one and a half million

229. Shaffer, *supra* note 4, at 348.

230. *See id.* Because assisted suicide is such a controversial topic, the number of states criminalizing assisted suicide fluctuates. As discussed below, Michigan recently criminalized assisted suicide while Oregon recently legalized it.

231. *Twenty-First Kevorkian-Assisted Suicide Is Declared a Homicide*, L.A. TIMES, Nov. 27, 1994, at A22.

232. *Nation in Brief: Michigan: Assisted Suicide Ban Held Constitutional*, L.A. TIMES, Dec. 14, 1994, at A21 [hereinafter *Nation in Brief*].

233. *See, e.g., Twenty-First Kevorkian-Assisted Suicide Is Declared a Homicide*, *supra* note 231 (assisting the suicide of a woman who had, among other ailments, rheumatoid arthritis, colonic diverticulitis, and osteoporosis and who had had both of her legs amputated and had lost one of her eyes.); Michael Granberry, *State to Revoke Medical License of 'Dr. Death'; Euthanasia: Jack Kevorkian Gained Worldwide Note for Helping 20 People, Including Costa Mesa Man, End Lives*, L.A. TIMES, July 28, 1994, at B1 (assisting the suicides of two women with terminal cancer).

234. *See Nation in Brief*, *supra* note 232.

235. Cynthia Hubert, *Euthanasia Advocates Win Two Key Court Rulings; Kevorkian Decision, Washington Case Indicate Growing Acceptance of "Right to Die" Principles*, S.F. EXAMINER, May 22, 1994, at A8.

236. *Oregon Voters Allow Assisted Suicide for the Terminally Ill*, L.A. TIMES, Nov. 11, 1994, at A34.

237. *Id.*

238. *Id.*

239. *Id.*

240. *Measure on Suicide Fought by Churches*, L.A. TIMES, Nov. 5, 1994, at B4.

dollars fighting it.²⁴¹ In the end, Measure 16 barely passed, fifty-one to forty-nine percent.²⁴²

As the experiences of England and India show, it is not entirely illogical to criminalize assisted suicide even when suicide and attempted suicide are not criminalized. When a society does not criminalize suicide and attempted suicide, it is deciding that the individual's choice in this matter is more important than the society's choice; but when a society criminalizes assisted suicide, it is often doing this because it is afraid that individuals will be pushed to commit suicide. This is a fear that has been expressed by the opponents of assisted suicide in the United States.²⁴³ However, if the culture has accepted that individuals have the right to choose suicide, then the continued criminalization of all assisted suicide will be hard to maintain. Already, it is not uncommon for doctors to secretly help patients to die.²⁴⁴ Nevertheless, the worries of the opponents of assisted suicide must be addressed, particularly the worry that people will be pushed to commit suicide. A law such as Oregon's measure 16 is a good step in this direction. It requires continued proactive action by the individual who wants to commit suicide. This helps to keep clear who is making the choice to commit suicide. As England's experience with suicide and India's experience with attempted suicide have shown, if the culture has determined that in certain circumstances individuals should be helped to commit suicide, it is futile to resist.

241. Cynthia Hubert, *New Assisted Suicide Law Splits Oregon*, SACRAMENTO BEE, Nov. 20, 1994, at A1.

242. *Id.*

243. Cynthia Hubert, *supra* note 235.

244. *See id.* *See also Oregon Voters Allow Assisted Suicide for the Terminally Ill*, *supra* note 236.

